

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 67

May 14, 1997, 6:37 pm
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CFE FLANK DOCUMENT/Ratification

SUBJECT: Flank Document Agreement to the Conventional Armed Forces in Europe Treaty . . . Treaty Doc. 105-5.
On agreeing to the resolution of advice and consent to ratification.

ACTION: RESOLUTION OF RATIFICATION AGREED TO, 100-0

SYNOPSIS: As passed, the resolution of ratification to the Flank Document Agreement to the Conventional Armed Forces In Europe (CFE) Treaty, will approve modifications to the CFE Treaty, subject to 14 conditions.

Background:

- The CFE Treaty (which was signed in 1990, was ratified in 1991, and went into force in 1992) places limits on the nonnuclear forces of the 22 NATO and former Warsaw Pact nations. Alliance-wide, regional, and national ceilings are placed on five categories of military equipment. Specific procedures for the destruction or redistribution of excess equipment are detailed. The Treaty also provides for data exchanges on equipment, force structure, and training maneuvers. Verification of compliance is through on-site inspections.

- In 1992, after the Soviet Union collapsed, the "Tashkent Agreement" was signed, dividing up Soviet weaponry among its successor states, and equipment ceilings were established for each of those states.

- Sublimits are set by the CFE Treaty for the stationing of military equipment in nested, overlapping zones in the center of Europe; sublimits are also set for the so-called "flank zone." The flank zone covers areas on both NATO's and the Warsaw Pact's northern and southern flanks. The flank zone limits prevent countries from complying with the limits on equipment in the center of Europe by transferring military equipment from there to the flank zone. The flank zone consists of Norway, Iceland, Turkey, Greece, Romania, Bulgaria, Moldova, Georgia, Azerbaijan, Armenia, and parts of Ukraine and Russia.

- This Flank Document (which was signed at the CFE Review Conference on May 31, 1996) was negotiated after Russia announced in 1994 that it would violate the Treaty if it were not amended. Russia contended that its security interests had changed since the collapse of the Soviet Union and that the restrictions in the flank zone were compromising those new security interests. The

(See other side)

YEAS (100)				NAYS (0)		NOT VOTING (0)	
Republican (55 or 100%)		Democrats (45 or 100%)		Republicans (0 or 0%)	Democrats (0 or 0%)	Republicans (0)	Democrats (0)
Abraham	Hutchinson	Akaka	Johnson				
Allard	Hutchison	Baucus	Kennedy				
Ashcroft	Inhofe	Biden	Kerrey				
Bennett	Jeffords	Bingaman	Kerry				
Bond	Kempthorne	Boxer	Kohl				
Brownback	Kyl	Breaux	Landrieu				
Burns	Lott	Bryan	Lautenberg				
Campbell	Lugar	Bumpers	Leahy				
Chafee	Mack	Byrd	Levin				
Coats	McCain	Cleland	Lieberman				
Cochran	McConnell	Conrad	Mikulski				
Collins	Murkowski	Daschle	Moseley-Braun				
Coverdell	Nickles	Dodd	Moynihan				
Craig	Roberts	Dorgan	Murray				
D'Amato	Roth	Durbin	Reed				
DeWine	Santorum	Feingold	Reid				
Domenici	Sessions	Feinstein	Robb				
Enzi	Shelby	Ford	Rockefeller				
Faircloth	Smith, Bob	Glenn	Sarbanes				
Frist	Smith, Gordon	Graham	Torricelli				
Gorton	Snowe	Harkin	Wellstone				
Gramm	Specter	Hollings	Wyden				
Grams	Stevens	Inouye					
Grassley	Thomas						
Gregg	Thompson						
Hagel	Thurmond						
Hatch	Warner						
Helms							

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

Clinton Administration at first refused to consider changes, and then abruptly gave in to Russian demands, negotiating a deal that was immediately repudiated by the United States' allies. A separate, confidential side agreement was then negotiated between the United States and Russia in order to gain Russian approval for the Flank Document. (Several of the conditions that are attached to this resolution of ratification were attached by Senators because of concerns over the language of that classified agreement. See below). Before this agreement was negotiated Russia carried through on its threat to violate it. In particular, it failed to meet the deadline for reducing military equipment in the Chechnya region. In Chechnya, it greatly increased its military presence as it conducted a brutal war against an independence movement. That war was characterized by widespread Russian atrocities and the targeting of civilians. Russia has also used its forces in the flank zone to coerce Ukraine and Moldova, both of which are sovereign states, and to threaten the sovereign Baltic states with invasion.

- The CFE Review Conference stipulated that this agreement would be in force provisionally until December 15, 1996; it then extended that deadline until May 15, 1997. If it is not ratified by that deadline, it will again be subject to review by all States Parties.

Flank Document terms:

- A Russian area bordering the Baltic States, a Russian area in the North Caucasus Military District (which includes Chechnya), and a Ukrainian area bordering Moldova will be removed from the flank zone.

- Russian and Ukrainian flank zone equipment limits will not be correspondingly reduced.

- The areas removed will be covered under less restrictive zone limits, except that some additional equipment restrictions and additional transparency (inspection and reporting) requirements will be imposed.

- The Russian Federation will not increase its treaty-limited equipment holdings in the original flank zone above its declared January 1, 1996 holdings.

- Sub-caps will be placed on Russian Armored Combat Vehicles in specific regions removed from the flank zone.

- The Russian Federation will have the right to utilize "to the maximum extent possible" reallocation of current quotas for equipment to be achieved through free negotiations and with full respect for the sovereignty of the States Parties involved.

- The Russian Federation will have the right to utilize "to the maximum extent possible" the CFE Treaty's provisions that allow temporary deployment of equipment within and outside its territory, to be achieved through free negotiations and with full respect for the sovereignty of the States Parties involved.

- Russia will have until May 31, 1999, to bring its deployments in the realigned flank zone into full compliance with the Treaty's flank limits.

Conditions include the following:

- U.S. policy remains that the Russian Federation must immediately and completely withdraw its armed forces and military equipment deployed on the territories of the independent states of the former Soviet Union unless those States fully and completely agree to that deployment.

- Before depositing the instrument of ratification, the President will be required to certify to Congress that NATO countries have issued a joint statement affirming that the CFE Flank Document does not give any State Party the right to station or to temporarily deploy Treaty-limited equipment on the territory of other States Parties without the freely expressed consent of such States Parties. A finding is also made that the Russian Federation currently deploys troops and equipment on the territories of other States Parties without their full and complete agreement, and that the United States should initiate discussions to secure the immediate withdrawal of those troops and equipment.

- U.S. involvement as an intermediary in negotiations involving the governments of Moldova, Ukraine, Azerbaijan, or Georgia will be limited to ensuring the sovereign equality of those states and will be aimed at ensuring that those states will be able to reject or to accept conditionally requests by other states to deploy military equipment on their territory and to reject or to accept conditionally any request to reallocate the current CFE equipment quotas.

- Several reports will be required, including a report on whether Armenia or other States Parties in the Caucasus region have violated the CFE Treaty or are not now in compliance with the Treaty, and what sanctions have been imposed for any violations.

- The President will be required to certify, prior to depositing the instrument of ratification, that the United States will vigorously reject any request for additional concessions before the CFE Flank Document goes into force. Any subsequent agreement to modify, to amend, or to alter the Treaty or the Flank Document will require Senate ratification.

- Nothing in condition (1) (the Biden-Byrd language) of the Intermediate Nuclear Forces (INF) Treaty will be taken as authorizing legislative approval of changes to treaties by majority votes of both Houses of Congress.

- Prior to depositing the instrument of ratification, the President will be required to certify to Congress that he will submit to the Senate for ratification any international agreement that converts the Anti-Ballistic Missile (ABM) Treaty to a multilateral treaty or that changes the geographic scope or coverage of the ABM Treaty.

- Prior to depositing the instrument of ratification, the President will be required to certify to Congress that the United States has informed all States Parties that it interprets "temporary deployment" as one of severely limited duration (as days or weeks and at most months) and that it will reject any effort to use temporary deployments in excess of equipment limits (as allowed under the CFE Treaty) to justify a permanent deployment or a deployment on another country's territory.

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Those favoring ratification contended:

Senators are in wide, bipartisan agreement that the White House was unjustified in delaying its submission of the Flank Document to the Senate for ratification. It was signed on May 31, 1996, but it was not submitted until April 7 of this year because until recently the Clinton Administration asserted it had the unilateral authority to make the contemplated changes. That assertion was false, and we are pleased that the Executive Branch has dropped its encroachment on the Senate's obligations. That point aside, the Flank Document has merit. When the CFE Treaty was negotiated, few people anticipated that the Soviet Union would implode over the next several years. Alliances and power centers have shifted. Russia is still the strongest military power in Europe, but it no longer rules an empire, and its military needs are not the same. It is fair, and logical, to adjust the CFE Treaty to meet new realities. At the same time, we are not underplaying the danger in relaxing CFE Treaty restrictions. It would be a monumental tragedy if the United States approved changes that allowed in the reconquest of countries that only so recently escaped from 70 years of Russian oppression. That danger is very real: Russia has not been reluctant in the last few years to use force against those countries, and we think that the Clinton Administration's weak response has only encouraged its aggression. However, we think the protections built into the Flank Document as well as this resolution of ratification are sufficient.

One condition in the resolution of ratification has been particularly controversial. That provision will block the President from submitting the resolution of ratification until after he certifies that he will submit to the Senate for ratification any proposals to multilateralize the ABM Treaty or to change its geographic scope or coverage. The Clinton Administration claims that multilateralizing the treaty is just a "clarification" that does not require Senate advice and consent. On that basis, it has negotiated the Memorandum of Understanding on Succession (MOUS) to multilateralize the treaty without Senate approval. It is clearly moving onto unconstitutional grounds. The President is charged with implementing treaties, and in so doing must naturally make technical corrections as times change in order to make sure that they are implemented as intended. However, multilateralizing this treaty is clearly a major and unintended change, especially as negotiated by the Clinton Administration. This bilateral treaty was negotiated to have symmetrical and reciprocal rights, obligations, and interests. Under the MOUS, though, at least 4 successor states will be part of the treaty, only one of those states will be allowed to have an ABM system, and each of those States will be able to veto any change. This fact is critical. When the ABM Treaty was negotiated, the United States and the Soviet Union wanted to ensure that neither side suddenly came up with a technological advance in missile defense that would make the other side's nuclear weapons obsolete. At the time, no one envisioned a multi-polar world with numerous small nations with short-range, battlefield ballistic missiles. Unfortunately, some Senators have supported the logic of the ABM Treaty for so long that that can no longer bring themselves to question it; they cannot admit that the threat is now greater from these smaller countries than from the Soviet Union, which does not even exist any longer. They are determined to prevent the development of short-range ballistic missile defenses because they are afraid that effective defenses against all missiles will be developed, and they think that result will then reignite the arms race. These Senators fully understand that the Administration's multilateralization proposal would make it much harder to negotiate changes to the ABM Treaty, and that is exactly the result for which they and the Clinton Administration are aiming. They know the Senate would never approve the MOUS, so they have taken the position that the MOUS is just a technical change, which is the opposite of what they know it to be. In defending their position, they have pointed to some Administration changes that were made to multilateralize treaties with the successor states of the Soviet Union. What our colleagues do not mention is that those changes did not change rights and obligations, nor do they mention that all but one of the arms control treaties with the former Soviet Union that were multilateralized were subject to Senate ratification. The only change to multilateralization that did not require ratification was on the Intermediate Nuclear Forces Treaty, because that change only required "negative assurances" from new members that they did not have intermediate-range nuclear missiles. No U.S. obligations or rights were affected.

The Senate needs to guard its constitutional role on treaties, particularly when they regard national security, from encroachment by the Executive Branch. This particular President has shown a tendency to disregard the Senate's role. He has asserted the unilateral right to amend the ABM Treaty, and until very recently he asserted that he did not have to submit the Flank Document for ratification. This resolution will reinforce the Senate's role in both these matters.

On the CFE Treaty in general, we note that it has been a huge success since it was put into force. More than 50,000 pieces of heavy conventional weaponry have been removed from Europe. We urge Senators to support ratification, so that the process may continue.

While favoring ratification, some Senators expressed the following reservations:

We oppose the language on the ABM Treaty. Our colleagues know that the Administration and many Senators believe that the President has full authority to multilateralize that treaty without submitting the change to the Senate for ratification. We can give them a list of dozens of other treaties with the countries of the former Soviet Union that have already been expanded in that fashion. The breakup of the Soviet Union did not, in our opinion, relieve the resulting countries from the international obligations they carried before the break up. Our colleagues did not oppose the President when he multilateralized those treaties; they only oppose him this

time because they want to scuttle the ABM Treaty. We do not want to ruin that treaty. It has been very effective in dampening the nuclear arms race, and continued adherence to it will prevent that race from taking off again. None of us knows what the future may hold; a few years ago, we faced a single, massive, dangerous enemy; a few years hence we may again face such an enemy. We need therefore to stick with the principle that nuclear defenses should not be built, because if they are more and more nuclear weapons will be built to get around them. On procedural grounds, we think our colleagues have made a great mistake in attaching this condition to the resolution. They are effectively holding the CFE Treaty changes, which everyone supports, hostage to their demands on the ABM Treaty. This action is reckless, and sets a precedent they may live to regret. On constitutional grounds, we note that the President cannot by resolution be told to give up his constitutional power to implement a treaty. That fact is important because under international law he can then submit this resolution of ratification without making the ABM certification to the Senate on the grounds that absent the unconstitutional provision the Senate would have ratified the resolution anyway. The best course would just be to remove the ABM provision from the Flank Document, but we know we do not have the votes to accomplish that end. Therefore, we must vote for ratification with this offensive provision still attached.

No arguments were expressed in opposition to ratification.